

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

KEITH REESE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 4:16CV1503 HEA
HOYT ARCHERY, et al.,	)	
	)	
Defendants,	)	

**OPINION, MEMORANDUM AND ORDER**

This matter is before the Court on Defendants Hoyt Archery, Inc. and Easton Technical Products, Inc.'s Motion to Dismiss, [Doc. No. 10]. Plaintiff has not responded to the Motion.

Defendant moves to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, but relies on affidavits attached to their Motion. Rule 12(b)(6) provides:

(b) HOW TO PRESENT DEFENSES. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

\* \* \* \* \*

(6) failure to state a claim upon which relief can be granted; and

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

Further, Rule 12(d) provides:


(d) **RESULT OF PRESENTING MATTERS OUTSIDE THE PLEADINGS.** If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

Since Defendants have attached affidavits in support of their positions, the Court will convert this motion into one for summary judgment and allow Plaintiff to present his own evidence in opposition to the motion.

Accordingly,

**IT IS HEREBY ORDERED** that Plaintiff is given 7 days from the date of this Order to present evidence, if any, in opposition to Defendants' Motion for Summary Judgment. Failure to do so will result in judgment being entered in favor of the moving defendants.

Dated this 27th day of April, 2017.

  
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HENRY EDWARD AUTREY  
UNITED STATES DISTRICT JUDGE